

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 5, 2006 Session

CONNIE SUE CRAIG MILLS v. THOMAS V. MILLS

Appeal from the Circuit Court for Hamilton County
No. 03D853 Jacqueline E. Schulten, Judge

No. E2005-01427-COA-R3-CV - FILED MAY 30, 2006

Connie Sue Craig Mills (“Wife”) filed a Petition for Contempt and Complaint for Damages against Thomas V. Mills (“Husband”) claiming, in part, that Husband had failed to disclose a judgment lien and rent concessions due to a tenant on property that Husband was ordered to transfer to Wife pursuant to the parties’ marital dissolution agreement. Wife also claimed that Husband tortiously interfered with a contract Wife had to refinance the property. After a bench trial, the Trial Court found and held, *inter alia*, that Wife would have to pursue her claim for repayment of the rent concessions in a separation action against the tenant, that Wife was entitled to a judgment against Husband to recover the amount of the discount offered to Wife by the prior note holder, and that Wife was entitled to an award of attorney’s fees. Husband appeals claiming that he was not in contempt of any court order and that Wife did not state a valid claim for, or prove, tortious interference with contract. We reverse.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed;
Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Marvin Berke and Megan C. England, Chattanooga, Tennessee for the Appellant, Thomas V. Mills.

William H. Horton, Chattanooga, Tennessee for the Appellee, Connie Sue Craig Mills.

OPINION

Background

Husband and Wife were divorced by a Final Divorce Decree entered August 10, 2004. In the Final Divorce Decree, the Trial Court adopted the Marital Dissolution Agreement and Permanent Parenting Plan (“Marital Dissolution Agreement”) entered into by the parties as its final judgment in the case after finding, *inter alia*, that the Marital Dissolution Agreement was reasonable, proper, and in the best interests of the parties and the parties’ minor children. In pertinent part, the Marital Dissolution Agreement provided that Husband was to transfer to Wife his interest in several parcels of real property including two parcels located at 2005 Suck Creek Road and 1925 Suck Creek Road in Chattanooga, Tennessee (“the Property”). The Marital Dissolution Agreement further provided:

(d) Husband warrants to Wife that there is no debt on Duane Road, a \$58,000 debt on the Suck Creek Road properties which is owed to Ken Butler, and no debt on 1904 Taft Highway. Husband will pay the debt to Ken Butler current through July, 2004, after which time Wife will assume such debt. Husband will pay all 2003 property taxes on Wife’s property awarded herein and all utilities and insurance through July 2004.

Husband transferred the Property to Wife via a quitclaim deed signed September 2, 2004.

In February of 2005, Wife filed a Petition for Contempt and Complaint for Damages claiming, in part, that Husband had failed to disclose that a tenant on the Property was entitled to rent concessions for the installation of an air conditioning unit and that there was a lien on the Property for a judgment against Husband. Wife also claimed that Husband, after learning that she was refinancing the debt on the Property, had contacted the holder of the note and purchased the note at a discount thereby tortiously interfering with Wife’s contractual rights to refinance the debt on the Property. The case was tried without a jury in May of 2005.

Wife testified at trial that after Husband transferred his interest in the Property to her, she was informed by a tenant, Linda McDougal, that Ms. McDougal had installed central air on the Property and that Husband earlier had agreed that Ms. McDougal could recoup this cost by taking rent concessions. Wife testified that she was unaware of any such arrangement before Husband’s transfer of his interest to her. Wife testified that Ms. McDougal had taken rent concessions over several months totaling \$900.

Wife also testified regarding her attempts to refinance the debt on the Property. Wife testified she contacted Ken Butler, the note holder, regarding refinancing and then contacted Northwest Georgia Bank to apply for a loan. Wife testified she wanted to refinance the debt, in part, because “I never really felt comfortable because I knew that was a friend of [Husband], and I just wanted my property to be with a” Wife testified that Mr. Butler told her “if I paid the mortgage

off I could get a \$4,000 discount. And then when I contacted the bank and called him back, he said he no longer needed that, but that he would give me a five percent discount.” Wife testified that she agreed to pay Mr. Butler with a \$2,500 discount. Wife further testified that she “never asked for more discount” from Mr. Butler.

Wife testified that she pursued obtaining a loan from Northwest Georgia Bank, but that difficulties arose when a title search disclosed a judgment lien against the Property. Wife testified that before she could close the loan, her daughter delivered to her a letter from Husband on Christmas day. The letter from Husband stated, in pertinent part:

In expanding my real estate interest I am now buying discounted 1st and 2nd mortgage notes. I have traded Ken Butler for the note on the Suck Creek store & property. You will need to make payments to me for \$811.84. Your timely payments will be appreciated. This is effective for Dec. 24 payment as it is not paid.

Wife testified that some time after receiving this letter from Husband, she closed her loan with the bank and paid off the note held by Husband. Wife testified that she had to pay Husband the full amount of the note with no discount and “had to pay a late charge because [Husband] said I was late on my payment.” Wife testified: “I was late on my payment because I was thinking I was going to pay the note off the same month, December. This was a huge shock to me to get this on Christmas Day. I had not paid it yet on Christmas Day.” Wife testified that she had the money and would have paid off Mr. Butler had Husband not intervened and purchased the note.

Linda McDougal, the tenant on the Property, also testified. Ms. McDougal testified that she was leasing the Property from Husband when she installed central air for a cost of approximately \$4,500. Ms. McDougal testified she made an agreement with Husband that she “could take so much a month out of rent.” Ms. McDougal testified that she did not actually receive any rent concessions from Husband because Husband was deeding the property to Wife when the time came to start the rent concessions. Ms. McDougal testified that on August 24, Husband brought her a document that she signed. This document provided, in pertinent part:

I Linda McDougal assume the remaining cost of all debt for improvements, remodeling, & modifications on rental property at 1925 Suck Creek Road. All cost to [Husband] have been satisfied by rent trade or cash from [Husband].

Knox Farmer, the branch manager at Northwest Georgia Bank who met with Wife regarding her refinance, testified at trial. Mr. Farmer testified that they started the refinance process in early December or late November. Mr. Farmer testified that title work obtained on the Property revealed a lien that delayed the loan process. The lien was for a judgment against Husband. Mr. Farmer testified he was told there was approximately \$1,600 still owed on the judgment lien. Mr. Farmer testified that a release of the judgment lien eventually was obtained, although how is unclear from the record. Mr. Farmer testified that he spoke with Mr. Butler regarding a discount on the payoff amount for the note and “I was able to conclude a discount or a percentage, and he gave me

an agreement stating that there would be a discount.” Mr. Farmer testified that he later learned that Husband held the note and Husband told Mr. Farmer that there would be no discount given. Mr. Farmer testified that Husband also “did assess a late charge because the payment was in fact late at that time. And I told him that that late charge would be paid if that’s what he so desired.” Mr. Farmer testified that Husband was paid off in full including the late charge.

Husband testified at trial that he had no idea that Ms. McDougal was going to take rent concessions. Husband testified: “I had no idea [the rent] was going to be withheld. That’s the reason I went and got this note from Ms. McDougal as soon as I heard about it.”

Husband also testified regarding his purchase of the note on the Property from Ken Butler. Husband testified that he went to Richard Buhrman’s office to buy the note, but cannot recall the exact date. When asked, Husband agreed that if the record showed the date was January 3, 2005, this was correct. Richard Buhrman testified that Husband was in his office in early January of 2005 to sign the documents for the transfer of the note. Husband testified that he paid Mr. Butler with a check and approximately \$20,000 in cash and stated: “I think [Mr. Butler] gave me a discount of 2,500 bucks.” When asked what he traded Mr. Butler for the note, as the letter to Wife stated, Husband replied: “Money.” When asked about the fact that he charged Wife the full amount of the loan despite purchasing the note for a discount, Husband stated: “It’s business.”

Husband testified that the judgment lien on the Property was a “complete surprise” to him. He stated: “I had totally no idea because the judgment was for another piece of property.” Husband testified that he did not pay anything more to have the judgment lien released.

Kenneth H. Butler testified that he knows Husband and knows that Wife was married to Husband, but that he never met Wife. Mr. Butler testified that he was aware that Husband and Wife divorced and that Wife became the owner of the Property on which he held the note. Mr. Butler testified that at the time Wife became the owner of the Property, “approximately fifty-four, fifty-five thousand” was owed on the mortgage. Mr. Butler testified:

[Wife] had contacted me and wanted to know if I would discount it - - if she would pay it off - - if she would pay it off. And I said, what is your time frame? And she said, I’ll have it paid in a week. And we agreed upon - - it was approximately - - it wasn’t hardly ten percent, but a twenty-five hundred dollar discount to it.

Mr. Butler further testified:

Well, that week went by and another week and several weeks, and then she called back and said, I’m getting the money from the bank; it’s going to take another week. And I said, that’s fine. But after about six weeks, the bank called me and said they had hit a snag and could not loan her the money. And at that point, she said she just couldn’t pay me off. Well, about a week later, she called me - - or several days - - I don’t remember the time frame, but it was a very short period of time - - she called

me and said, if you'll discount it, I think it was five thousand dollars, I'll go ahead and get your money. I said, Ms. Mills, this is really not the way to do business, and I don't appreciate that. And I think I just hung up the phone or got off the phone very shortly with her.

Mr. Butler testified "[Wife] wanted to renegotiate a deal that had already been made with me kind of under pressure because I had made some obligations to where that money was going." Mr. Butler testified that after he got off the phone with Wife, he contacted Husband and told Husband about the situation and asked if Husband would be interested in purchasing the note. Mr. Butler testified that he sold the note to Husband for the same \$2,500 discount he had offered to Wife and received a check and some cash from Husband.

After trial, the Trial Court entered an order on May 17, 2005, finding and holding, *inter alia*, that Wife was not a party to the lease between Husband and Ms. McDougal, was not entitled to require Husband to repay the rent deduction taken by Ms. McDougal and would have to pursue the rent deduction matter by way of a separate claim against Ms. McDougal; that Wife was entitled to recover \$2,500 from Husband as the amount of the discount offered to Wife by Mr. Butler; and that Wife was entitled to an award of attorney's fees in the amount of \$1,788 "with respect to the contempt matter and upon the Court's finding that [Husband] is liable under the contempt petition for the amount of \$2,500. . . ."

Husband filed his appeal to this Court.

Discussion

Although not stated exactly as such, Husband raises three issues on appeal: 1) whether the Trial Court erred in holding that Husband had tortiously interfered with a contract Wife made to refinance the Property; 2) whether the Trial Court erred in finding Husband in contempt; and, 3) whether the Trial Court erred in awarding Wife her attorney's fees. Wife raises two additional issues claiming that the Trial Court erred in not finding Husband in further contempt for his failure to disclose the rent concession to Ms. McDougal, and claiming she is entitled to an award of attorney's fees on appeal because this is a frivolous appeal.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

We first consider whether the Trial Court erred in holding that Husband had tortiously interfered with a contract Wife made to refinance the Property. A claim for inducement to breach

a contract, such as Wife's, is based on the common law and on Tenn. Code Ann. § 47-50-109, which provides:

47-50-109. Procurement of breach of contracts unlawful – Damages.

– It is unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of the contract. The party injured by such breach may bring suit for the breach and for such damages.

Tenn. Code Ann. § 47-50-109 (2001). As stated in *Myers v. Pickering Firm, Inc.*, common law provides:

The elements of a cause of action for procurement of the breach of a contract are: 1) there must be a legal contract; 2) the wrongdoer must have knowledge of the existence of the contract; 3) there must be an intention to induce its breach; 4) the wrongdoer must have acted maliciously; 5) there must be a breach of the contract; 6) the act complained of must be the proximate cause of the breach of the contract; and, 7) there must have been damages resulting from the breach of the contract.

Myers v. Pickering Firm, Inc., 959 S.W.2d 152, 158 (Tenn. Ct. App. 1997).

Husband argues that Wife failed to prove all of the elements of her claim. We agree. Mr. Butler testified that Wife “had contacted me and wanted to know if I would discount it - - if she would pay it off - - if she would pay it off. And I said, what is your time frame? And she said, I’ll have it paid in a week.” The evidence shows that Wife did not pay off the note within a week. Mr. Butler further testified:

Well, that week went by and another week and several weeks, and then she called back and said, I’m getting the money from the bank; it’s going to take another week. And I said, that’s fine. But after about six weeks, the bank called me and said they had hit a snag and could not loan her the money. And at that point, she said she just couldn’t pay me off.

Mr. Butler testified that Wife then made another offer and asked for a further discount, which Mr. Butler refused. Given these facts, the evidence does not support a finding that a contract existed between Mr. Butler and Wife for any discount. In addition, the only proof in the record regarding Husband’s knowledge of a contract between Mr. Butler and Wife is that Mr. Butler contacted Husband after refusing Wife’s request for a further discount and that Mr. Butler made an offer to Husband. Further, nothing in the record shows that Husband intended to induce a breach of any contract between Wife and Mr. Butler. The record shows that Wife simply was unable to prove the

elements of her cause of action for procurement of the breach of a contract. While Husband's actions may well be described as "vindictive" as argued by Wife, they fail to satisfy the elements for procurement of breach of contract.

We next consider whether the Trial Court erred in finding Husband in contempt. In pertinent part, Tenn. Code Ann. § 29-9-102 provides:

The power of the several courts to issue attachments, and inflict punishments for contempts of court, shall not be construed to extend to any except the following cases:

* * *

(3) The willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts;

Tenn. Code Ann. § 29-9-102 (2000).

The Trial Court found Husband in contempt in regard to the refinancing of the Property. However, there was no "lawful writ, process, order, rule, decree, or command of such courts" that Husband violated by purchasing the note on the Property. *Id.* Wife's appellate brief argues that Husband is in contempt of court for violating the Marital Dissolution Agreement. However, the Marital Dissolution Agreement, in regard to the Property, required only that Husband transfer all of his interest in the Property to Wife, which Husband did by way of a quitclaim deed. The Marital Dissolution Agreement never forbid Husband from acquiring the note on the Property. Husband's purchase of the note was nothing more than what any third party could have done. Mr. Butler was free to sell the note, and he did so. The fact that Husband purchased it as opposed to some third party doing so does not violate any order of the Trial Court. As such, Husband did not violate an order of the Trial Court by purchasing the note on the Property and could not be held in contempt for such purchase. While Husband's behavior may indeed have been vindictive and clearly was intended to give Wife a hard time, it was not in contempt of court.

As to Wife's claim that the Trial Court erred in not finding Husband in further contempt for his failure to disclose the rent concession to Ms. McDougal, we find the evidence does not preponderate against the findings of the Trial Court with respect to this issue. Likewise, we find no error by the Trial Court in its holding based on these findings, and we find this issue to be without merit.

Given that Wife did not prove her claim of tortious interference with contract and that Husband was not in contempt of court by purchasing the note on the Property, or otherwise, we reverse the Trial Court's holding that Wife was entitled to recover \$2,500 from Husband as the

amount of the discount offered to Wife by Mr. Butler. As the award of attorney's fees to Wife was based upon the finding of contempt, which we reverse, we vacate the award of attorney's fees.

As Husband was successful on appeal, we decline to hold that this is a frivolous appeal, and we further decline to award any attorney's fees on appeal to either party.

Conclusion

The judgment of the Trial Court is reversed, and this cause is remanded to the Trial Court solely for collection of the costs below. The costs on appeal are assessed against the Appellee, Connie Sue Craig Mills.

D. MICHAEL SWINEY, JUDGE